

COMMISSIONER STEPHEN KOPLAN  
STATEMENT OF VIEWS ON ADEQUACY  
SORBITOL FROM FRANCE, INV. NO. 731-TA-44 (REVIEW)  
ANHYDROUS SODIUM METASILICATE FROM FRANCE, INV. NO. 731-TA-25 (REVIEW)

I have voted to conduct a full review in these investigations in order to be able to consider information excluded from the record because it was untimely filed. Specifically, in both investigations, a response to our notice of institution filed on behalf of a large domestic producer was rejected because it was filed one business day late. As a result of the decision to reject these submissions, there is no response to the respective notice of institution by those interested parties. Thus, those parties would be precluded from any further participation if these reviews were expedited and I would be unable to consider the information contained in their responses in rendering my determinations. In a full review, each party would be free to submit the information in question to the Commission.

I recognize that adherence to our administrative deadlines is important, particularly in five-year reviews which can have relatively short time frames. Indeed, I wish to stress that parties filing submissions after a deadline risk rejection. Nevertheless, I believe that given the importance of the information contained in the submissions at issue, the Commission should be more flexible in assessing whether to accept *de minimis* late filings.

My views on this matter are informed by the equitable principle of "excusable neglect." Under that principle, the U.S. Supreme Court has ruled that courts may accept late filings after weighing the prejudice to other parties, the extent of the delay, the impact of the delay on the conduct of the proceedings, and the reason for the delay, including whether it was the result of matters reasonably within the control of the party seeking to submit the material. *See Pioneer Investment Services Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380 (1993).

I believe that the Commission should apply its discretionary rules in a manner that takes into account the full range of equitable considerations, in keeping with our administrative responsibility to create a complete record. In this regard, I do not believe that the Commission should have a more narrow and limited rule for accepting late filed documents than that adopted by the U.S. Supreme Court. I do not believe that erecting a rigid barrier against late filings is necessary to deter parties from freely ignoring our deadlines so long as the more flexible approach is applied judiciously.

In both of these investigations, the submissions at issue arrived the next business day after the due date. Neither the Commission nor the parties to the investigation were prejudiced by that *de minimis* delay. In the case of *Sorbitol from France*, Inv. No. 731-TA-44 (Review), counsel for Roquette America Inc. in fact stated that he was informed by a Commission employee prior to sending the submission by overnight courier that the late-filed submission might be accepted "since the documents would not be looked at" before the next business day. *See* Letter from Oleg Rivkin, Esq., Fox Horan & Camerini LLP, to the Honorable Donna R. Koehnke, Secretary, USITC, December 8, 1998.

In this regard, I note that the deadlines at issue are administrative and are intended to aid us in our administration of the statute in a manner that provides due process to all interested parties. In these investigations, in my view, administration of our statutory responsibility is best served if we can consider the information at issue. Consideration of that information would provide a more complete record on which I can render my determination in these investigations while respecting the due process rights of all interested parties, including those seeking to supply the information. Based on the facts and circumstances surrounding both of these late filings, it is my opinion that the Commission should have exercised its discretion to accept them. Accordingly, I have voted to conduct a full review in these investigations.